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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,149	12/31/2003	Masahiko Kurauchi	246323US0CONT	6858

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/748,149

Applicant(s)

KURAUCHI ET AL.

Examiner

Yvonne R. Abbott

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: the use of the phrase "animal breeding material" to describe the invention is misdescriptive.

Appropriate correction is required.

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "animal breeding material" in the claims is used to mean "antibacterial deodorant pad for an animal, for the purpose of absorbing liquid secreted, exuded, or excreted from a living body", while the accepted meaning is an article which assists in the reproductive function of the animal. The term is indefinite because the specification does not clearly redefine the term. The invention is merely described as being used by "placing or laying in a cage or the like or applying onto an animal body during the breeding of an animal for the purpose of facilitating the disposal of excrements (feces and urine), preventing offensive smells, or the like" (Spec, page 3). The specification further states "in the case of the *animal breeding material* or article, *such as an antibacterial deodorant pad for an animal*, for the purpose of absorbing liquid secreted, exuded, or excreted from a living body" (emphasis added) (page 6).

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Applicant appears to be describing a waste collection device or deodorant pad for animals, and not a "breeding material".

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

3. The following titles are suggested: "waste collection device" , "animal deodorant pad" or "animal bedding material".

Claim Objections

4. Claims 1-12 are objected to because of the following informalities: the claims are misdescriptive in that it is unclear how the claimed structure relates to animal breeding. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification failed to describe how the "animal breeding material" was to be used for animal breeding.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

a. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

b. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 2 and 4 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4 of copending Application No. 10/296217. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim sets are directed to a material containing a partial ester of an amino acid combined with cellulose or its salt, wherein the material is fibrous.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1, 5 and 6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2 and 6 of copending Application No. 10/834108. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because both claim sets are drawn to a material containing a basic amino acid cellulose partial ester or a salt thereof, wherein the basic amino acid cellulose partial ester is selected from the group consisting of a lysine cellulose partial ester, an arginine cellulose partial ester, an ornithine cellulose partial ester and a histidine cellulose partial ester, and wherein the basic amino acid cellulose partial ester has a degree of substitution for esterification ranging from 0.00001 to less than 3.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. The Examiner notes Applicants' recitation of MPEP §804, however, since claims 1-12 are not in condition for allowance (the "provisional" double patenting rejection is not the only remaining rejection), the rejection is maintained.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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12. Claims 1, 2, 7, 8 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Denesuk et al. (6,196,156). Denesuk et al. disclose an animal bedding material comprising a fibrous filling selected from the group consisting of polyolefin, acrylic, nylon, polyester, polyurethane, polyethylene, cellulose acetate (which is a cellulose ester), triacetate resin fibers and blends thereof; wherein the bedding has antibacterial deodorizing properties and is to be used as an underlay for animals.

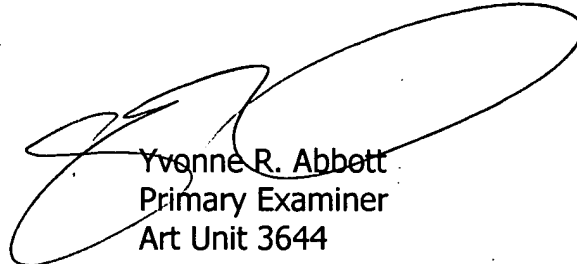
13. Claims 1, 2, 7 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Evans et al. (3,563,241). Evans et al. disclose a water dispersible, non-woven fabric of fibers capable of being used for an animal bedding material comprising cellulose phosphate fibers.

14. Claims 1, 7, 10, 11 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Lang (4736706). Lang discloses a deodorizing animal litter capable of being used as an animal breeding material (inasmuch as Applicants' have defined animal breeding material to include material which absorbs liquid secreted, exuded, or excreted from a living body) comprising zinc chloride (claim 3).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Monday-Thursday 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbett
Primary Examiner
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